Supreme Court, U.S.
FILED

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No.

In The

SUPREME COURT OF THE UNITED STATES
October Term, 2001

WALTER BURRIER

Petitioner

versus

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

Respondent

AND

JOSE RAUL BLANCO AND REFUGIO DEL CARMEN GARCIA HERNANDEZ

Real Parties in Interest

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Walter Burrier
In Pro Per
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QUESTIONS PRESENTED

1. Do undocumented aliens have standing in a state court to contest the standard of legal representation given to them in a Federal Immigration Forum, where the attorney is not a member of that state bar and practices only federal law?

2. Do undocumented aliens, who have been banned from the United States, have standing to file any action in any court within the United States?

LIST OF PARTIES

The parties herein are:

Walter Burrier.....Petitioner

The Superior Court of the State of California For the County of
Los Angeles.....Respondent

Jose Raul Blanco and Refugio Del Carmen Garcia Hernandez.....Real Parties in Interest

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No.

In The

SUPREME COURT OF THE UNITED STATES
October Term, 2001

WALTER BURRIER *Petitioner,*

versus

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,
Respondent,

AND

JOSE RAUL BLANCO AND REFUGIO DEL CARMEN GARCIA HERNANDEZ *Real Parties in Interest.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

OPINIONS BELOW

The opinion sought to be reviewed is that of the Supreme Court of California in *Burrier vs. Los Angeles Superior Court*, 2001 (Court Number S101063) entered October 32, 2001. The decision

of the Supreme Court was not officially reported. The Supreme Court is the highest California appellate court.

The Supreme Court case was an appeal from The California Court of Appeals in *Burrier vs. Los Angeles Superior Court*, 2001 (Court Number No. B152987) entered September 20, 2001. The decision was not officially reported. The California Court of Appeals decision was an appeal of the trial court in *Jose Raul Blanco, et. al. vs. Walter Burrier, et. al.* 2001 (Court Case No. BC 249933) ruling entered on September 6, 2001. The decisions of the Trial Court are not officially reported.

JURISDICTION

This is a case arising under The Immigration and Naturalization Act 8 U.S.C. Section 1158.

A petition for review was filed by the petitioner, October 1, 2001 before The Supreme Court of California.

The jurisdiction of the Supreme Court of the United States is conferred by Rule 10 of the Supreme Court of the United States of America and 8 U.S.C. section 1329.

Additionally as 28 U.S.C. section 2403 (b) applies the petitioner is serving a copy of this petition on the Attorney General of California.

STATUTE

The statute primary to this case is the Immigration and Naturalization Act, 8 U.S.C. section 1158.

STATEMENT OF THE CASE

The California Superior court, as upheld by the appellate courts, allowed a malpractice action to continue against an attorney, licensed in Connecticut, but not California, for alleged malpractice in a United States Immigration Court. The California courts were not concerned that the defendant attorney has never practiced in California courts and that the plaintiff aliens have been permanently banned from the United States by the Immigration court after exhausting all appeals available in that court.

ARGUMENT

A. Facts

The plaintiffs were and are citizens and residents of the country of El Salvador, who entered the United States illegally without inspection, prior to March 1998. They sought to legalize their status in the United States, in Los Angeles California and they sought the services of a non attorney Carlos Quintanilla, a named

defendant in the lower court action, who has not yet been served and is not yet a party herein.[1]

The plaintiffs through Quintanilla claimed political asylum pursuant to 8 U.S.C. 1158, and 8 C.F.R. 208. They filed a U.S. Department of Justice Form "I-589" with the Immigration and Naturalization Service in pursuit of their claim of political asylum. Under United States law a claim for political asylum is also considered a claim for "withholding of removal" under 8 C.F.R. 208.1(a).

The plaintiffs' claims followed standard immigration review, not at issue herein, until their claims reached the Immigration Court in Los Angeles, California. The plaintiffs were represented at all times before that immigration court, by the petitioner, a licensed attorney in the state of Connecticut, who practices federal immigration law and has an office in California. The plaintiffs claim they first met the petitioner in August of 1998.

The petitioner is authorized to practice before the Immigration Court, Executive Office of Immigration Review under 8 C.F.R. section 1.1(f) and 8 C.F.R. section 292.1(a)(1) and subject to discipline under 8 C.F.R. section 292.3

The plaintiffs had a political asylum hearing on or about July of 1999. At that hearing the

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[1] A claim against Quintanilla was made under a statute in California regulating "immigration consultants" which is not the subject of the action reviewed herein.

Federal Immigration Judge determined that the plaintiffs were not entitled to any relief, including political asylum and withholding of removal.

Further the court specifically held that the plaintiffs had filed a "frivolous" application under 8 U.S.C. 1158 (d)(6). Under the law, asylum applicants who have made a "knowingly" frivolous application for asylum are permanently ineligible for any benefits. In effect they are banned for life.

The plaintiffs filed a motion to re-open the matter with the Immigration Court based on ineffective counsel, which was denied. All Immigration appeals having been exhausted, the prior finding of a frivolous asylum was determined a final ruling.

Nevertheless, on July 13, 2001, plaintiffs obtained their current counsel and filed an action in California Superior Court, Case No. BC249933, against Walter Burrier and Carlos Quintanilla claiming damages for fraud and denial of immigration benefits through malpractice.

Petitioner retained the services of Stephen J. Alexander, an attorney licensed in the state of California, (but not before the United States Supreme Court), to represent him in the lower court actions. Pursuant to California law, California Code of Civil Procedure 410.30, the petitioner filed a special motion to dismiss on forum inconvenient grounds. The petitioner through counsel, specially appeared contesting jurisdiction, both personal and subject matter

jurisdiction, and agreeing to jurisdiction in either Connecticut or in the Federal District court.

The trial court denied the motion on September 6, 2001. Pursuant to California law, the denial of the motion not being a final judgment, and by California Code of Civil Procedure 418.10, a Writ of Mandate was filed on September 17, 2001 Case No. B152987 . Said Writ was summarily denied on September 20, 2001. A petition for review was then filed by the petitioner on October 1, 2001 before The Supreme Court of California, the highest California appellate court, Case No. S101063. That petition was also summarily denied on October 31, 2001. Through a Petition, a Writ of Certiorari before the United States Supreme Court is now requested.

The Supreme Court of California is the highest California State Court and appeal to the United States Supreme Court is appropriate as all lower court relief has been exhausted

Jurisdictional issues including the federal subject matter jurisdiction were raised in the state trial court by motion and through all stages of appeal.

B. California Lacks Subject Matter Jurisdiction

The authority of Congress and the Federal Government to control immigration and foreign

relations comes directly from the United States Constitution. The United States Constitution gives the Congress the power to regulate commerce with foreign nations, to establish uniform rules of naturalization, to provide for the general welfare, and to make all laws necessary and proper to carry out its powers. These specific powers are found in The United States Constitution Section 8, Clause 1, The United States Constitution Section 8, Clause 3, The United States Constitution Section 8, Clause 4, and The United States Constitution Section 8, Clause 18. The power of the Federal Government in foreign affairs was also upheld in *United States v. Curtiss-Wright Corp.* 299 U.S. 304 (1936).

The Federal Government, the United States Congress, has the authority to regulate the practice of immigration. A state's power to regulate or restrict the practice of law before a federal Court, must yield to federal law. The United States Supreme Court in *Sperry v. Florida* 373 U.S. 379 (1963) so held. In Sperry, the petitioner was not an attorney, but practiced before the United States Patent Office located in Florida. The state of Florida obtained an injunction to prevent the petitioner from appearing before the Patent Office, as he was "engaged in the unauthorized practice of law" within the state of Florida.

The court held that Sperry did engage in the unauthorized practice of law as defined by

Florida and that Florida's police powers did permit the state to regulate the unauthorized practice of law. Yet, despite the interest of Florida in protecting its citizens the court held that Florida's law must yield to the Federal Government. Citing *Gibbons v. Ogden* 9 Wheat 1,211 the court stated "But 'the law of the State, though enacted in the exercise of powers, not contraverted, must yield' when incompatible with federal legislation...." *Sperry v. Florida* 373 U.S. 379 (1963)

The court stated clearly that no state could regulate a person granted a right to practice before a Federal Board. The court cited *Pennsylvania c. Wheeling & Bridge Co.* 13 How. 518, 566

> "The statute thus expressly permits the Commissioner to authorize practice before the Patent Office by nonlawyers, And the Commissioner has explicitly granted such authority. If authorization is unqualified, then by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority. A State may not enforce licensing

> requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a person or agency is qualified and entitled to perform certain functions or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress"

Sperry v. Florida 373 U.S. 379 (1963)

Once it has been determined that Congress has the power to regulate Immigration and Naturalization and that the police power of the State must yield to Congress, it must be determined whether or not Congress did in fact intend to pre-empt State law and prohibit malpractice actions, with regard to immigration, within state court. A leading case on pre-emption is *Medtronic v. Lohr* 518 US 470, 64 U.S.L.W. 4625 (1996). The US Supreme Court held that for pre-emption to apply, the Federal Statute's language must show a "clear and manifest" purpose to pre-empt. The specific state action must threaten to interfere with a specific federal interest.

The US Supreme Court has also decided a pre-emption case in which a common law tort

action not specifically mentioned in Federal Law was pre-empted by the legislative scheme. In *Cipollone v Liggett Group* 505 U.S. 504 (1992) the plaintiff brought a tort action against cigarette manufacturers, claiming they failed to warn him about the hazards of smoking. The defendant manufacturers claimed that any action under a state tort action was pre-empted by the Federal labeling requirements. The court determined that the federal language that "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising ...of cigarettes ... of which are lawfully labeled.", pre-empted the State court tort actions.

Viewing the law as applied to the facts herein, the Congress has passed significant legislation and regulation concerning immigration and the practice within the Immigration Court. Pursuant to Federal regulations the Federal government has set up a specific statutory scheme concerning exactly who may appear as a representative of another before the Executive Office for Immigration Review. 8 C.F.R. section 1.1(f) permits attorneys to appear, regardless if they are licensed in the state where the court is located. 8 C.F.R. section 292.1(a)(2)-(5) provides for law students, reputable individuals, accredited representatives and accredited officials to appear. These individuals are all nonattorneys. If the federal law permits and regulates appearances, then common law actions for malpractice against

attorneys must also be pre-empted by law and any state action must be prohibited.

C. United States Law Bans Malpractice and Other Private Actions under Asylum Law

Under Federal law 8 U.S.C. section 1158 (d)(7) no private action is permitted or created by the political asylum statute.

D. California Lacks Personal Jurisdiction over both the Plaintiffs and Petitioner

The US Supreme Court has held that for personal State jurisdiction to apply a party must have "minimum contacts" with the forum state "such that the maintenance of the suit does not offend `traditional notions of fair play and substantial justice" held in *Shaffer v. Heitner* 433 US 186 (1977)applying *International Shoe Co. v. Washington*, 326 US 310 (1945). Mere presence in the forum state is not enough.

In this case the petitioner has little else then physical presence in the forum state. The petitioner is a Connecticut attorney and has no license to practice law in the California courts. His practice is strictly limited to Immigration law in several states with an office in California. Nothing

the petitioner has done avails him of any benefit in California and California has no interest in regulating his practice in courts which involve no California law or citizen. Even under California law, foreign attorneys are to be sued within their home state under their home state standard, *Credit Lyonais Bank Nederland v. F.L. Amhurst* 202 Cal. App. 3d. 1424, 249 Cal.Rptr. 559 (Cal.App.2 Dist. 1988).

California also lacks personal jurisdiction over the plaintiffs herein. The plaintiffs have legally been determined to have filed a frivolous asylum application and are permanently banned under 8 U.S.C. 1158 (d)(6). They can have no "presence" of any kind within the United States. The finding of frivolousness is final, with all appeals having expired. They are subject to immediate and permanent expulsion. No action by any California court can overrule the federal court's order physically removing the plaintiffs from the United States. The presence of the plaintiffs in the forum state is a clear violation of Federal law. The state trial court, the only court to rule on the merits of the jurisdictional arguments, held that the petitioner must wait until the plaintiffs are in fact physically removed before the action may be dismissed. This is an issue of first impression, but clearly logic dictates that if the plaintiffs have lost all legal status in the United States, their physical removal is not required for a finding of absence from the forum state.

If the plaintiffs are seeking this state action to avoid the removal consequences and not solely to obtain damages, they must resolve their issues within the federal court. Only a federal judge would have the power, if such power exists, to stay a permanent removal of the plaintiffs.

There being no personal nor subject matter jurisdiction within the California courts, the petitioner requests that this court grant Certiorari and dismiss the action pending within the California State court.

CONCLUSION

There being neither subject matter nor personal jurisdiction against the defendant petitioner in California, this court should grant the writ and dismiss the California action pursuant to law.

REASONS FOR GRANTING THE WRIT

This case should be reviewed because it will prevent a California Court from exceeding its jurisdiction into United States Immigration Law. It will avoid the unnecessary expense and judicial waste of resources by ending an improper grant of judicial power over matters never entrusted to a state of the United States. The California action is an attempt by aliens lawfully prohibited from

entering the United States, to override a federal order and remain in the United States. Further it is an attempt to bring discipline, via California Courts, an attorney who has never been licensed nor appeared in California Courts.

Dated this 19th Day of April, 2002

Walter Burrier
In Pro Per

a

APPENDIX

APPENDIX – A Minute Order from the Los Angeles, California Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Action No. BC249933

WALTER BURRIER - -Petitioner

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES - - - - -Respondent

AND

JOSE RAUL BLANCO AND REFUGIO DEL CARMEN GARCIA HERNANDEZ - -Real Parties in Interest

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ORDER---Entered September 6, 2001

Defendant has moved for dismissal on the grounds of Forum Non Conveniens. After thoroughly reviewing the memoranda and the record as well as hearing oral argument of counsel and being sufficiently advised,

IT IS HEREBY ORDERED that Defendant's motion for an order dismissing the action on the grounds of Forum Non Conveniens is DENIED.

This is a final and appealable order.
This 6th day of September, 2001.

/s/ Reginald A. Dunn
Reginald A. Dunn
Judge, Superior Court of California

Entered: September 6, 2001
cc: Counsel of Record

c

APPENDIX – B Decision of the California Court of Appeals, Summarily Denying the Writ

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

Civil Action No. B152987

WALTER BURRIER - -Petitioner

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES - - - - -Respondent

AND

JOSE RAUL BLANCO AND REFUGIO DEL CARMEN GARCIA HERNANDEZ - -Real Parties in Interest

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ORDER---Entered September 20, 2001

Defendant has petitioned the court for a writ of mandate. After having read and considered the Defendant's petition for writ of mandate,

IT IS HEREBY ORDERED that the petition is denied.

This is a final and appealable order.
This 20th day of September, 2001.

/s/ Turner
Turner
Presiding Judge

/s/ Grignon
Grignon
Judge

Entered: September 20, 2001
cc: Counsel of Record

e

APPENDIX – C Decision of the California Supreme Court, Summarily Denying Relief

SUPREME COURT OF CALIFORNIA
En Banc

Civil Action No. S101063

WALTER BURRIER - -Petitioner

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES - - - - -Respondent

AND

JOSE RAUL BLANCO AND REFUGIO DEL CARMEN GARCIA HERNANDEZ - -Real Parties in Interest

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ORDER---Entered October 31, 2001.

f

Petition for review DENIED.

This is a final and appealable order.
This 31st day of October, 2001.

/s/ George
George
Chief Justice

Entered: October 31, 2001
cc: Counsel of Record

APPENDIX - D 8C.F.R. 292.1

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 292--REPRESENTATION AND APPEARANCES--Table of Contents

Sec. 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States. Any attorney as defined in Sec. 1.1(f) of this chapter.

(2) Law students and law graduates not yet admitted to the bar. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a

legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) Reputable individuals. Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend),

provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

(4) Accredited representatives. A person representing an organization described in Sec. 292.2 of this chapter who has been accredited by the Board.

(5) Accredited officials. An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) Attorneys outside the United States. An attorney other than one described in Sec. 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines

of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

(b) Persons formerly authorized to practice. A person, other than a representative of an organization described in Sec. 292.2 of this chapter, who on December 23, 1952, was authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of Sec. 292.3 of this chapter.

(c) Former employees. No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) Amicus curiae. The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

(e) Except as set forth in this section, no other person or persons shall represent others in any case.

APPENDIX - E 8 C.F.R. 292.3

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 292--REPRESENTATION AND APPEARANCES--Table of Contents

Sec. 292.3 Professional conduct for practitioners--Rules and procedures.

(a) General provisions--(1) Authority to sanction. An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Service when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in Sec. 3.102 of this chapter. In accordance with the disciplinary proceedings set forth in part 3 of this chapter, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion, which is permanent, from practice before the Board and the Immigration

Courts or the Service, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) Persons subject to sanctions. Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in Sec. 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in Sec. 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to paragraph (i) of this section.

(b) Grounds of discipline as set forth in Sec. 3.102 of this chapter. It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in Sec. 3.102 of this chapter, with the exception of paragraphs (k) and (l) of that section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed

in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify the Service of conviction or discipline--(1) Petition. The Office of the General Counsel of the Service shall petition the Board to suspend immediately from practice before the Service any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in Sec. 3.102(h) of this chapter, or who has been disbarred or suspended on an interim or final basis by, or has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or any Federal court. A copy of the petition shall be forwarded to the Office of the General Counsel of EOIR, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Service also apply to the practitioner's authority to practice before the Board or the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(2) Immediate suspension. Upon the filing of a petition for immediate suspension by the Office of the General Counsel of the Service, together with

a certified copy of a court record finding that a practitioner has been so found guilty of a serious crime, or has been so disciplined or has so resigned, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Service and/or the Board and Immigration Courts, notwithstanding the pendency of an appeal, if any, of the underlying conviction or discipline, pending final disposition of a summary proceeding, as provided in paragraph (c)(3) of this section. Such immediate suspension will continue until imposition of a final administrative decision. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(3) Summary disciplinary proceedings. The Office of the General Counsel of the Service shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section. Summary proceedings shall be initiated by the issuance of a Notice of Intent to Discipline, accompanied by a certified copy of the order, judgment and/or record evidencing the underlying criminal

conviction or discipline. Summary proceedings shall be conducted in accordance with the provisions set forth in Secs. 3.105 and 3.106 of this chapter. Any such proceeding shall not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(i) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of that crime in any summary disciplinary hearing based thereon.

(ii) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation with an admission of misconduct, (i.e., reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(A) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such an infirmity of proof establishing the
practitioner's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(C) The imposition of discipline by the adjudicating official would result in grave injustice.

(4) Duty of practitioner to notify the Service of conviction or discipline. Any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in Sec. 3.102(h) of this chapter, or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court, must notify the Office of the General Counsel of the Service of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (c)(1) of this section. This duty to notify applies only to convictions for serious crimes or to orders imposing discipline for professional misconduct entered on or after July 27, 2000.

(d) Filing of complaints; preliminary inquiries; resolutions; referral of complaints--(1) Filing of complaints--(i) Misconduct occurring before Service. Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Service by a practitioner shall be filed with the Office of the General Counsel of the Service. Disciplinary complaints must be

submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of the Service. The Office of the General Counsel of the Service shall notify the Office of the General Counsel of EOIR of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(ii) Misconduct occurring before the Board and the Immigration Courts. Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Board and the Immigration Courts by a practitioner shall be filed with the Office of the General Counsel of EOIR pursuant to the procedures set forth in Sec. 3.104(a) of this chapter.

(2) Preliminary inquiry. Upon receipt of a disciplinary complaint or on its own initiative, the Office of the General Counsel of the Service will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry

and any subsequent proceeding based thereon. If the Office of the General Counsel of the Service determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of the Service may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(3) Resolutions reached prior to the issuance of a Notice of Intent to Discipline. The Office of the General Counsel of the Service, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(4) Referral of complaints of criminal conduct. If the Office of the General Counsel of the Service receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of the Service shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of the Service shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the

disciplinary process nor criminal prosecutions are jeopardized.

(e) Notice of Intent to Discipline--(1) Issuance of Notice to practitioner. If, upon completion of the preliminary inquiry, the Office of the General Counsel of the Service determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in Sec. 3.102 of this chapter, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in Sec. 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(2) Copy of Notice to EOIR; reciprocity of disciplinary sanctions. A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of EOIR. The Office of the General Counsel of EOIR may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Service also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to

broaden the scope of the proposed discipline must be filed with the adjudicating official.

(3) Answer--(i) Filing. The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board as provided in Sec. 3.105(c) of this chapter.

(ii) Failure to file an answer. Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced. Upon such a default by the practitioner, the Office of the General Counsel of the Service shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall adopt the recommended disciplinary sanctions in the Notice of Intent to Discipline and issue a final order as provided in Sec. 3.105(d) of this chapter. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on the Office of the General Counsel of the Service, provided:

(A) Such a motion is filed within 15 days of service of the final order; and

(B) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(f) Hearing and disposition; appeal; reinstatement proceedings. Upon the filing of an answer, the matter shall be heard and decided according to the procedures set forth in Sec. 3.106(a), (b), and (c) of this chapter. The Office of the General Counsel of the Service shall represent the government. Reinstatement proceedings shall be conducted according to the procedures set forth in Sec. 3.107 of this chapter.

(g) Referral. In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of the Service may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of the Service shall transmit notice of all public discipline imposed under this rule to the National

Lawyer Regulatory Data Bank maintained by the American Bar Association.

(h) Confidentiality--(1) Complaints and preliminary inquiries. Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of the Service may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) Disclosure of information for the purpose of protecting the public. The Office of the General Counsel of the Service may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of the Service may define the scope of information disseminated

and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the Office of the General Counsel of the Service has determined not to pursue all of the complaints. The Office of the General Counsel of the Service may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) Disclosure of information for the purpose of conducting a preliminary inquiry. The Office of the General Counsel of the Service, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) Resolutions reached prior to the issuance of a Notice of Intent to Discipline. Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) Notices of Intent to Discipline and action subsequent thereto. Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the

Board. Disciplinary hearings are open to the public, except as noted in Sec. 3.106(a)(v) of this chapter.

(i) Discipline of government attorneys. Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.

APPENDIX – F 8 C.F.R. 208.1 (a)

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 208--PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL—

Subpart A--Asylum and Withholding of Removal

Sec. 208.1 General.

(a) Applicability. Unless otherwise provided in this chapter, this subpart shall apply to all applications for asylum under section 208 of the

Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in Sec. 208.16(d). Such applications are hereinafter referred to as ``asylum applications.'' The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where applicable.

APPENDIX – G 8 U.S.C. 1158

Sec. 1158. - Asylum
(a) Authority to apply for asylum

(1) In general
Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.
(2) Exceptions
(A) Safe third country Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.
(B) Time limit
Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien

demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B). (3) Limitation on judicial review No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2). (b) Conditions for granting asylum

(1) In general

The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(2) Exceptions
(A) In general
Paragraph (1) shall not apply to an alien if the Attorney General determines that -
(i)
the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
(ii)
the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;
(iii)
there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;
(iv)
there are reasonable grounds for regarding the alien as a danger to the security of the United States;
(v)
the alien is inadmissible under subclause (I), (II), (III), or (IV) of section 1182(a)(3)(B)(i) of this title or removable under section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's

discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi)

the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same

status as the alien if accompanying, or following to join, such alien.
(c) Asylum status
(1) In general
In the case of an alien granted asylum under subsection (b) of this section, the Attorney General -
(A)
shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;
(B)
shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and
(C)
may allow the alien to travel abroad with the prior consent of the Attorney General.
(2) Termination of asylum
Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that -
(A)
the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;
(B)

the alien meets a condition described in subsection (b)(2) of this section;

(C)

the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D)

the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E)

the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or

deportability under section [1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the

assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall -

(A)

advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B)

provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that -

(i)

asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of

State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii)

in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii)

in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv)

any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v)

in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person

APPENDIX – H 8 U.S.C. 1329

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at

which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefore. Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers